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OFFICE OF PETITIONS

In re Application :
Stomp et al. :
Application No. 09/915,873 : DECISION ON APPLICATION
Filed: July 26, 2001 : FOR PATENT TERM ADJUSTMENT
Attorney Docket No. :
40989/237225(9280-12) :

This is a decision on the "PETITION FOR REINSTATEMENT OF PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(c)," filed June 9, 2004. Applicants request that the patent term adjustment be recalculated and 49 days of patent term be reinstated.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is one hundred twenty-three (**123**) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 2, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 74 days. On June 9, 2004, applicants timely¹ submitted this application for patent term adjustment. Applicants request reinstatement of the period of reduction of 49 days for delay in filing a reply to the Notice to File Missing Parts of Application mailed September 13, 2001. Applicants point out that the response was mailed with a certificate of mailing on November 13, 2001 but was not received by the Patent Office until either January 16, 2002 (according to their return postcard) or January 31, 2002 (according to PAIR). Citing the Official Gazette dated January 15, 2002, applicants state that, in spite of all due care, the applicant was unable to reply to the Office action within three months of the date of mailing. Further,

¹ As of the mailing of this decision, the period for paying the Issue Fee continues to run. The fee is due by September 2, 2004.

pursuant to the OG notice, applicants request waiver of the fee under § 1.18(e).

The OG Notice dated January 15, 2002 (1254 OG 92), provided that:

If a reply to an Office action or notice was mailed on or after October 13, 2001 and no later than December 1, 2001 (as shown on a certificate of mailing under 37 CFR 1.8), and the applicant is otherwise entitled to patent term adjustment (or additional patent term adjustment) but for the fact that there was a reduction of such patent term adjustment under 35 U.S.C. 154(b)(2)(C)(ii) and 37 CFR 1.704(b) due to the receipt of such reply by the Office more than three business days after the date indicated on the certificate of mailing, the Office will consider the USPS mail situation discussed in this notice to constitute a sufficient showing that, in spite of all due care, the applicant was unable to reply to the Office action or notice within three months of the date of mailing of the Office action or notice. In this situation, the Office will, subject to the conditions set forth below, reinstate a period equal to the period beginning on the date that is four business days after the date indicated on the certificate of mailing on the reply and the date of receipt (37 CFR 1.6) of the reply in the Office up to a maximum of three months.

The relevant reply to the Notice mailed September 13, 2001 was mailed on November 13, 2001, as shown by the certificate of mailing under § 1.8 thereon. However, the patent term adjustment was reduced because the reply was not received in the Office until January 16, 2002. In addition, the Office entered the date of January 31, 2002 as the date the application was considered complete in response to the Notice and used that later date in calculating the 49 day reduction of patent term adjustment.

Thus, it is concluded that the Notice dated January 15, 2002 is applicable to this situation; in spite of all due care, the applicants were unable to reply to the Notice to File Missing Parts within three months of the date of mailing of the notice. It is further concluded that applicants have met the other conditions set forth in the Notice for reinstatement of patent term. In this instance, the period of reinstatement begins on November 17, 2001, the day that is four business days after November 13, 2001, and ends on January 16, 2002, the date of receipt of the reply². This period constitutes more than 49 days, and thus, applicants are entitled to reinstatement of the entire period of reduction of 49 days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is one hundred twenty-three (123) days.

² The Office erred in calculating the reduction using the date of January 31, 2002, rather than January 16, 2002. If the entire reduction were not being reinstated, correction of this error would otherwise warrant a revision of the patent term adjustment.

It is further noted that applicants have met the requirements set forth in the Notice for waiver of the fee for consideration under 37 CFR § 1.705.

The Office will forward the file to the Office of Patent Publication so that the patent can be issued in a timely manner.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (703) 305-0309.

Karin Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Attachment: Copy of Revised PAIR Screen